

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT DAVIS,

Plaintiff-Appellant,

v

MARILYN WHEELER,

Defendant-Appellee,

and

JAMILLE EDWARDS, BRENDA EPPERSON,
BLANCHE MCCLARY, HIGHLAND PARK
SCHOOL DISTRICT and JOYCE WATKINS,

Defendants.

Before: Jansen, P.J., and Borrello and Stephens, JJ

PER CURIAM.

Plaintiff appeals as of right the trial court's dismissal of his motion for a writ of quo warranto against defendant, Marilyn Wheeler. Plaintiff argues that the trial court erred in its interpretation and application of the Constitution and the applicable statutes in this case. We granted plaintiff's motion to expedite this appeal because it involves election-related issues. *Davis v Wheeler*, unpublished order of the Court of Appeals, entered January 8, 2009 (Docket No. 288016). We affirm.

Both parties are members of the Highland Park Board of Education (the Board). Defendant was elected to the Board on May 8, 2007, but she failed to file an Acceptance of Office form according to the requirements of MCL 168.309 (within ten days after notification of election). Because of this error, defendant was removed from her seat on the Board by order of the Wayne Circuit Court, and the seat was declared vacant on March 26, 2008.¹ On April 10, 2008, the Board voted to appoint defendant to the vacancy created by her court-ordered

¹ Plaintiff also filed the complaint that led to defendant's removal in that case.

removal.² While defendant began participating in board meetings on April 10, she did not take the oath of office until April 15, 2008. Plaintiff filed a complaint for a writ of quo warranto against multiple members of the Board, including defendant. After the dismissal of the other defendants, plaintiff filed a motion for writ of quo warranto against defendant only. In that motion, plaintiff argued that defendant could not be reappointed to the seat from which she was ousted, and, alternatively, that her failure to take the oath before conducting Board activities renders the seat vacant. The trial court disagreed and plaintiff appealed.

On appeal, plaintiff first argues that the trial court erred in its interpretation of MCL 600.4515, contending that the statute bars defendant from being appointed to the seat left vacant by her removal. We disagree. We review questions of statutory interpretation de novo. *Shinholster v Annapolis Hosp*, 471 Mich 540, 548; 685 NW2d 275 (2004).

This Court's primary goal when considering statutory language is to give effect to the intent of the Legislature. *Alvan Motor v Dep't of Treasury*, 281 Mich App 35, 39; ___ NW2d ___ (2008). If the statutory language is unambiguous, no judicial construction is required and the plain meaning of the language must be applied. *Id.* A provision is ambiguous if it irreconcilably conflicts with another provision or if it is equally susceptible to more than one meaning. *Id.* at 39-40. Every word or phrase should be ascribed its plain and ordinary meaning. *Id.* at 40; MCL 8.3a. Further, it is appropriate to consider the dictionary definition of a nonlegal word or phrase that is not defined by statute. *Wesche v Mecosta Co Rd Comm*, 480 Mich 75, 84; 746 NW2d 847 (2008). Finally, "it is important to ensure that words in a statute not be ignored, treated as surplusage, or rendered nugatory." *Robertson v DaimlerChrysler Corp*, 465 Mich 732, 748; 641 NW2d 567 (2002).

MCL 600.4515 provides:

Whenever any defendant in a quo warranto proceeding is found or adjudged guilty of usurping or intruding into or unlawfully holding or exercising any office, franchise, or privilege, judgment shall be rendered that *the defendant be ousted and altogether excluded from that office, franchise, or privilege*. In addition to awarding costs against the defendant, the court may, in its discretion, impose a fine upon the defendant found guilty, not exceeding \$2,000.00. [Emphasis added.]

Defendant was previously removed from office pursuant to this statute for failing to file her acceptance of office form. Plaintiff argues that the plain meaning of the term "altogether excluded" is that defendant is to be prevented from holding office in the future.

The statute does not define the word *excluded*. MCL 600.4515. The dictionary defines *exclude* to mean "to expel and keep out," or "to shut or keep out; to prevent the entrance of." *Random House Webster's College Dictionary* (2000). We agree with plaintiff that "to keep out" does not admit of the interpretation that ouster under MCL 600.4515 is only temporary. There is

² Plaintiff was not present at this Board meeting.

no provision of the statute that permits an ousted party to cure the defect and retake office. The clear meaning of the statute is that ouster is permanent. Further, the use of the word *excluded* in this statute is unambiguous and requires no further judicial construction. *Alvan Motor, supra* at 39.

Nevertheless, MCL 600.4515 also does not contemplate the possibility of an ousted party entering the same office by election or appointment in the future. It is not permissible to read meaning into an unambiguous statute that is not within the manifest intent of the Legislature, as defined by the words of the statute. *Alvan Motor, supra*, 281 Mich App 39. Thus, the trial court did not err when it concluded that no part of MCL 600.4515 prohibits the Board from appointing defendant after her removal.

Defendant next argues on appeal that the constitutional requirement that a public official take the oath of office before entering upon the duties of her office supplies the time requirement for taking the oath under MCL 201.3(7). We disagree.

As noted above, if statutory language is unambiguous, its plain meaning must be applied without addition or construction. *Alvan Motor, supra* at 39-40. The intent of the Legislature is paramount. *Id.* Likewise, a court must give constitutional language its plain meaning, where possible. *Phillips v Mirac, Inc*, 470 Mich 415, 422, 685 NW2d 174 (2004).

MCL 201.3 provides, in pertinent part:

Every office shall become vacant, on the happening of any of the following events, before the expiration of the term of such office:

* * *

(7) [The incumbent's] refusal or neglect to take his oath of office, or to give, or renew any official bond, or to deposit such oath, or bond, *in the manner and within the time prescribed by law*. [Emphasis added.]

Const 1963, art 11, § 1 states: "All officers, legislative, executive and judicial, before entering upon the duties of their respective offices, shall take and subscribe the following oath"

The record indicates that defendant participated in votes during the April 10, 2008, Board meeting after her appointment but before taking the oath of office. Plaintiff argues that, pursuant to MCL 201.3(7), the "time prescribed by law" for taking an oath is, as provided in Const 1963, art 11, § 1, "before entering upon the duties of their respective offices." On the contrary, it is apparent that the plain meaning of this constitutional language is that an officer may not enter upon the duties of her office until the oath is taken. This is not a time requirement; rather, it is a substantive requirement for an officer's legal exercise of the duties of her office.

There is no indication that defendant's failure to take the oath for five days violates MCL 201.3(7). Therefore, the office need not be declared vacant because defendant engaged in Board activities before taking the oath of office. As the trial court noted, the lawfulness of defendant's participation in Board activities prior to taking the oath might be subject to challenge, but there is

no reason that the delay disqualifies her from properly taking the oath later and consummating her appointment at that time.

Affirmed.

/s/ Kathleen Jansen

/s/ Cynthia Diane Stephens